

BEFORE PUBLIC LAW BOARD NO. 7590  
CASE NO. 32

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BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION

V.

BNSF RAILWAY  
(Former ATSF Railway)

Carrier File No. 14-13-0001  
Organization File. 160-13N1-12101

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STATEMENT OF CLAIM

Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement commencing November 7, 2012, when Claimant, Phillip A. Arington (1578152), was disciplined with a Level S 30-day Record Suspension with a 1 year review period for his alleged failure to identify and remediate defects and failure to report defects in Track Inspection Management System (TIMS) while working as Track Supervisor on the Clovis Subdivision. The Carrier alleged violation of EI 2.2.3 Authority and Responsibility of Inspectors and EI 2.4.6 Record of Track Inspections.
2. As a consequence of the violation referred to in part 1 the Carrier shall remove from the Claimant's record this discipline and he be reinstated, if applicable, of seniority, with all rights unimpaired; the reinstatement of lost vacation time; and for the payment of all wage and expense loss, commencing November 7, 2012, continuing forward and/or otherwise made whole.

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The carrier or carriers and the employee or employees involved in this dispute are respectively carrier or employee within the meaning of the Railway Labor Act as approved June 21, 1934.

Public Law Board 7590 has jurisdiction over the parties and the dispute involved herein.

The Carrier maintains that the evidence clearly established Claimant's infraction when he failed to report and remediate defects in switch 103C. The Organization responds that the evidence shows that the switch was repaired. According to the Organization, the instant matter involves a disagreement on how the measurement should be taken between the FRA inspector and the Carrier Track Inspectors.

The Board sits as an appellate forum in discipline cases. As such, it does not weigh the evidence *de novo*. Thus, it is not our function to substitute our judgment for the Carrier's judgment

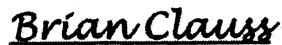
and decide the matter according to what we might have done had the decision been ours. Rather, our inquiry is whether substantial evidence exists to sustain the finding against Claimant. If the question is decided in the affirmative, we are not warranted in disturbing the penalty absent a showing that the Carrier's actions were an abuse of discretion.

A review of the evidence in the instant matter shows that the transcript is incomplete. The record submitted contains testimony and exhibits beginning with Mr. Delk and Exhibit 9. Absent the testimony and evidence preceding Mr. Delk, there is nothing in the record to support the charges.

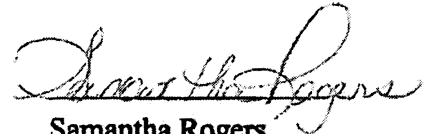
Claim sustained. The Carrier shall make this award effective within 30 days of execution.



Dave Scoville  
Organization Member



Brian Clauss  
Neutral Member



Samantha Rogers  
Carrier Member

Signed on September 22, 2015